IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO. 93 OF 2007
IN
SUMMARY SUIT NO.3543 OF 2006

M/s. Forward Leather Company & Anr. ..Plaintiffs.
Vs.
M/s. ANZ Trading Private Limited ..Defendant.

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Ms. Ranguta Menon i/b Anil Menon for the Plaintiffs.
Mr. M.B. Jadhav with Bhupendra Singh for the Defendant.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

9th April, 2007.

P.C. :

1. In pursuance of a Memorandum of Understanding, the Defendant placed a purchase order upon the Plaintiff for the supply of a consignment of shoes of a total value of Rs.34,85,592/-. The order was executed by the Plaintiff under six invoices between 3rd October and 31st October, 2003. Each of the invoices is stated to have been accompanied by a delivery note/ gate pass. After receiving a total of 2378 pairs of shoes, the Defendant returned 1345 pairs valued at

Rs.19,73,115/- The total value, inclusive of central sales tax computed at the rate of 4%, of the returned goods was Rs.20,52,039. The amount due and payable in respect of the consignment sold, supplied and delivered was therefore reduced to Rs.10,98,300/-. On 30th November, 2005, the Defendant in response to the Plaintiff' s letter dated 24th November, 2005 sought time to commence making payments of the outstandings stating that the Defendant was facing a serious financial position.

2. There is no reply to the Summons for Judgment though the Defendant has entered appearance. The only submission which has been urged is that the Plaintiff has claimed interest at the rate of 24% per annum though that is not provided for in the invoices. The material allegations in the Plaint have not been disputed. The amount of Rs.10,98,330/- as per the particulars of claim at Exh. E to the Plaint is exclusive of interest. In my view, it would be appropriate and proper that the Plaintiff is awarded interest at the rate of 9% per annum on the principal amount of the invoices as aforesaid from the

date of the suit until payment or realization. The Defendant having failed to make out any case entitling him to leave to defend under Order 37, the Plaintiff would be entitled to a decree as prayed, save with the aforesaid modification. The claim of the Plaintiff falls within the purview of the order 37. There is no dispute about the fact that the goods in respect of which the dispute has been founded have been duly received by the Defendant. The suit shall accordingly stand decreed in terms of prayer clause (a) with the modification that the Plaintiff will be entitled to interest at the rate of 9% per annum from the date of the institution of the suit until the date of the decree and at the same rate from the date of the decree until payment or realization.

The Plaintiff would be entitled to the costs of the suit.